

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM:HMT:CIN:1:Postf-137722-02  
LRAverbeck

date: JUL 19 2002

to: [REDACTED]  
Team Coordinator, Team [REDACTED]

from: Associate Area Counsel  
(Heavy Manufacturing and Transportation)

subject: [REDACTED]  
**Restricted Consent to Extend the Statute of Limitations**

This memorandum responds to your request for assistance dated July 12, 2002. This memorandum should not be cited as precedent.

**ISSUE**

Whether the language proposed for Form 872 extending the Statute of Limitations on assessment and collection under I.R.C. § 6501(c)(4) is adequate to restrict the extension to the enumerated issues.

**CONCLUSION**

We suggest additional language on the Form 872 to restrict the statute extension to the enumerated issues and to ensure that both parties are equally subject to the restrictions.

**FACTS**

The corporate tax returns for the tax period ending December 31, [REDACTED] and [REDACTED] for [REDACTED] are currently under examination. The statute of limitations for the [REDACTED] tax year ends on [REDACTED]. The taxpayer does not want to hold the [REDACTED] tax year open until the [REDACTED] year can close and will not agree to a consent to extend the statute of limitations unless the consent is restricted. The taxpayer requested a partial agreement with a restricted consent for un-agreed issues, but the exam team feels this is not feasible. The agreed-upon issues constitute a net over-assessment, while the total adjustments would result in a deficiency. The taxpayer also wishes to protect its ability to go to Appeals.

## DISCUSSION

Internal Revenue Code § 6501(a) provides that, as a general rule, tax must be assessed within three years of the filing date of the return. Under I.R.C. § 6501(c)(4), a taxpayer and the Service may consent in writing to an extension of the time for making an assessment. Chapter 22 of the Internal Revenue Manual provides that the Internal Revenue Service may, in unusual circumstances, obtain consents from the taxpayer to extend the Statute of Limitations on Assessment date. An examiner may request a consent in cases where less than 180 days remain until the statute expires and either there is insufficient time to complete the examination and administrative processing of the case, or it appears there will be substantial additional tax due, or the taxpayer has requested the case be sent to Appeals. The examiner should not send a case to Appeals with less than 180 days remaining on the statutory limitation period. In such a case, if no consent to extend the statute can be obtained, the examiner may have to issue the statutory notice of deficiency.

There is some uncertainty as to the extent of the restrictions covered by the language on the Forms 872. The standard Form 872 provides the taxpayer a related six month extension from the expiration of the agreement in which to file a refund claim, as specified in I.R.C. § 6511(c)(1). Where the agreement itself is restricted to particular issues, it would seem unnecessary to specifically restrict a refund claim to those issues also. In a 1992 decision, the 7<sup>th</sup> Circuit Court of Appeals noted that as the Code allows extensions by agreement for any tax imposed under Title 26, the parties are free to limit the terms of the agreement to a specific tax. In that case, Indiana Nat'l Corp. v. United States, 980 F.2d 1098 (7<sup>th</sup> Cir. 1992), the agreement was expressly limited to the assessment of a specific type of tax, namely income tax. A refund claim was not expressly limited in the agreement, yet the court held that the taxpayer could not file a refund claim for excise tax where, but for the extension agreement, the statute of limitations had expired. Indiana Nat'l Corp., 980 F.2d 1098 (7<sup>th</sup> Cir. 1992).

However, the Service still follows a more liberal interpretation of section 6511(c), as applied by the U.S. District Court for the Northern District of Alabama in Liberty Nat'l Life Ins. Co. v. United States, 77-1 U.S.T.C. ¶ 9107 (ND Ala. 1976), rev'd on other grounds, 600 F.2d 1106 (5<sup>th</sup> Cir. 1979), cert. denied, 444 U.S. 1072 (1980). Namely, that even though a consent to assess tax is restricted to a particular issue, the taxpayer's right under section 6511(c) to claim a credit or refund based upon such consent is not automatically so restricted. Thus, although the Form 872 would restrict the

extension to the issues listed with no distinction as to assessments or refund claims, we think it would be in the best interest of the Service to use even more specific language in the agreement so that refund claims are clearly limited in the same manner as assessments.

To achieve such a similar restriction on credits and refunds, we suggest you add an additional restricted paragraph to the consent. The following paragraph, inserted after the restricted issues, would limit the taxpayer's right to file a claim for credit or refund:

The provisions of section 6511(c), as set forth in paragraph (2), above, are limited to any refund or credit resulting from adjustments for which the period for assessment is extended under this agreement.

However, if the taxpayer balks at including the above paragraph, you may remove it from the consent and still protect our right to examine the listed issues.

In addition, we suggest the following language on the consent form to restrict the issues:


The Statute of Limitations extended by this agreement is limited to additional deficiency assessments or claims for credit or refund, resulting from any adjustments to the following items, including any consequential changes to other items based on such adjustments:

1. The tax treatment of expenses and income, including up front payments and net tax deductions, related to the taxpayer's Lease-In-Lease-Out transactions.
2. The tax treatment and timing of acquisition expenses incurred or claimed in [REDACTED], including any rollover adjustments arising from examination of taxable years [REDACTED] and [REDACTED], by the taxpayer or various acquired entities, i.e., whether the expenses are deductible by the taxpayer, and, if so, the classification of the expenses as either currently deductible, capital, or eligible for treatment under I.R.C. § 195.
3. The tax treatment by the taxpayer, as successor in interest to [REDACTED], of charitable contributions made by [REDACTED] in [REDACTED], prior to its acquisition by the taxpayer.

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

RICHARD E. TROGOLO  
Associate Area Counsel  
(Large and Mid-Size Business)

By:   
LINDA R. AVERBECK  
Attorney (LMSB)